THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.NO.3035 OF 2006

DATED: 30.6.2006

BETWEEN:

1. Smt.B.Madhavi … Petitioner.

And

1. District Collector, R.r.District
and others. … Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.3035 OF 2006

ORDER:

1. Heard the counsel.

2. The writ petition is filed for writ of mandamus directing the respondents, essentially Malkajgiri municipality, the second respondent herein, not to grant any permission or if already granted to declare the same as null and void in respect of Survey No.14 of Ammuguda village, Malkajgiri Mandal, which falls within the jurisdiction of Kapra municipality, which was demarcated in accordance with the directions of this Court in W.P.No.2634 of 2001 dated 19.2.2001, and to pass suitable orders. The Commissioner, Kapra municipality also was impleaded as a party respondent No.5 in the present writ petition.

3. Sri Veerabhadra Rao, the learned counsel representing the writ petitioners had taken this Court through the contents of the affidavit filed in support of the writ petition, and the prior orders and also the sale deeds and other material, and would contend that in the facts and circumstances of the case, the relief as prayed for to be granted.

4. On the contrary, Sri P.Radhakrishna had taken this court through the averments made in the counter affidavit in general, and at paras-4 and 5 in particular, and would contend that in the facts and

circumstances, since it is again doubtful where exactly the land in question is located, the same my be demarcated with the help of Mandal Revenue Officer with the assistance of the Municipal Commissioner.

5. It is stated that the petitioners are the absolute owners of the subject matter of the writ petition, which they purchased by virtue of registered sale deed dated 27.6.2001 from the rightful owners. It is also stated that the said land falls in survey No.14 of Ammuguda village of Kapra municipality, Malkajgiri mandal of Ranga Reddy district. It is further stated that Smt.Chettaboina Uma and another filed W.P.No.2634 of 2001 and the same was disposed of on 19.2.2001 with a direction to the seventh respondent, the Assistant Director, Survey and Land Records to undertake demarcation work and complete the same in accordance with law, as expeditiously as possible, preferably within four weeks from the date of the receipt of the copy of the order. It is also further directed to issue certified copies to the petitioners along with sketch and to other interested parties, if any such application were to be made, on payment of usual charges. In pursuance thereof, demarcation was made and sketch of the plan was made clearly mentioning that survey No.14 of Ammuguda village would fall under Kapra municipality on 6.4.2001. The copy and the sketch also are filed herewith. It is also further stated that survey No.14 falls within the jurisdiction of Kapra municipality and Survey No.280/1 falls within the jurisdiction of Malkajgiri municipality, which is adjacent to the land of the petitioners. On representations made by the petitioners, the Commissioner, Kapra Municipality vide letter No.01/2085/2001 dated 30.8.2001 addressed a letter to the Commissioner, Malkajgiri Municipality not to sanction any building permission in survey No.14 by treating it as survey No.281/1 of

Malkajgiri village and also cancel building permission so far sanctioned, in view of the demarcation made by the Assistant Director, Survey and Land Records, Ranga Reddy district. It is stated that in spite of the orders made by this Court and also in spite of the demarcation and despite the fact that the petitioners are in possession of the property, the Commissioner, Malkajgiri Municipality highhandedly granted building permission with House No.37-10/6/5 in order to avoid urban land ceiling permission. It is further stated that the Commissioner, Malkajgiri Municipality had no jurisdiction to grant any permission to Kapra Municipality and it is in violation of A.P.Municipalities Act and also in violation of Article 300-A of the Constitution of India. It is stated that a representation was made in this regard to the Commissioner, Malkajgiri Municipality, but he advised to file a suit to get the permission cancelled. Under these circumstances, the present writ petition is filed.

6. The second respondent filed counter affidavit narrating several details. At Para-4 of the counter, it is stated that the Commissioner, Kapra Municipality in his letter G1/2015/2001 dated 30.8.2001 while enclosing a copy of location, sketch of plot Nos.8 and 9 of Survey No.14 of Ammuguda vllage in W.P.no.2634 of 2001 prepared by the Inspector, Survey and Land Records, Ranga Reddy District and the same clearly shows that the plot Nos.8, 9, 15 and open space of Survey No.14 of Ammuguda village is within the limits of Kapra Municipality and not in Survey No.218/1 of Malkajgiri Municipality. It is also stated that as per the directions of the Hon'ble High Court in W.P.No.19805 of 2001, the petitioners have to get the boundaries of Survey No.14 of Ammuguda village and Survey No.218/1 of Malkajgiri village, be finalized by Survey and Land department records with the appointment of Court Commissioner in the presence of both the

Municipal Commissioners of Kapra and Malkajgiri Municipalities. It is also further stated in para-5 of the counter that Survey No.14 of Ammuguda village falls within the jurisdiction of Kapra Municipality whereas survey No.218/1 falls within the jurisdiction of Malkajgiri Municipality, which is adjacent to the limits of Kapra Municipality. There is no scope for overlapping of Survey No.14 of Ammuguda village and Survey No.218/1 of Malkajgiri village. It is also further stated that the petitioners who possess lands in Ammuguda village have no manner of right to encroach upon the land belonging to Malkajgiri village. Even the Commissioner, Kapra Municipality cannot clarify that the petition schedule lands belong to Ammuguda village of Kapra Municipality. The letter bearing MKJ/G2/767/2001, dated 29.10.2001 of the Commissioner, Malkajgiri Municipality addressed to the Commissioner, Kapra Municipality explaining the facts of the case in the light of Judgment and decree in O.S.No.688 of 1992 and 711 of 1992 and W.P.No.19805 of 2001, clearly says that the plot Nos.6, 7, 8, 9, and 15 falls in the Defence Co-operative Housing Society, malkajgiri Municipality i.e., in Survey No.218/1 of Malkajgiri village. In W.P.No.19805 of 2001 the Hon'ble High Court advised the petitioners to approach appropriate court of competent civil jurisdiction and, if necessary, can get a Commissioner, appointed for identification of land and also take effective steps to prevent the municipality from granting permission in respect of the land owned by them. It is further stated that the grant or refusal of building permission itself, by the Municipality, would not confer or take away any right, title or interest in any immovable property. The objection of the petitioner is not maintainable in the light of the orders of the Hon'ble High Court in W.P.No.19805 of 2001 dated 24.9.2001. It is also stated that the copy of the letter dated 29.10.2001 addressed to the Commissioner, Kapra

Municipality also was filed alongwith the counter for better appreciation.

7. As can be seen from the stand taken by both the petitioners and also the second respondent, the exact location of the land appears to be doubtful. It is needless to say that this is a disputed question of fact. However, some material is placed before this Court to substantiate the stand taken by the petitioners. In the light of the respective stands taken by both the parties and also in the light of the prior proceedings, this Court is of the considered opinion that this is a fit matter where the exact location of the property in question to be identified by the concerned Mandal Revenue Officer, Malkajgiri mandal, the third respondent, in the presence and with the assistance of the second respondent, the Commissioner, Malkajgiri Municipality and the fifth respondent, the Commissioner of Kapra Municipality. This exercise to be made keeping in view the prior proceedings and also the respective stands taken by both the petitioners in the affidavit filed in support of the writ petition and also in the counter filed by the second respondent. The said exercise to be completed by respondent No.3 with the assistance of respondent Nos.2 and 5, within a period of two months from the date of the receipt of this order.

8. The writ petition is accordingly disposed of with the above direction. No order as to cots.

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30.6.2006.

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